IN THE HIGH COURT OF BOMBAY AT GOA
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LETTERS PATENT APPEAL NO. 5 OF 2002

State, represented by the
Land Acquisition Officer
Collector and office at
Panaji-Goa and Executive
Engineer W.D. XIV (KH)
PWD, Fattorda, Margao, Goa. ... Appellant.

Versus

2. Leonor Serula de
Quadros, unmarried,
major of age, Air
Hostess,

2. Helena Serula de Quadros,
Unmarried, Librarian both
residing at Lisbon,
represented by their
Attorney Fernando Jorge
Colaco, Adv. c/o Manguilesh
Bldg., 18th June Rd.,
Panaji, Goa. ... Respondents.

Shri S. R.Rivonkar, Government Advcoate for the appellant.

Mr.F.J. Colaco, advocate for the respondents.

CORAM : F. I. REBELLO &
P. V. HARDAS, JJ.

DATE : 6th August, 2003.

ORAL JUDGMENT (Per Rebello, J.)

This Letters Patent Appeal is directed against the Judgment and Order dated 8th/9th November, 2001 of a learned Single Judge of this Court. The respondents herein are the persons whose land was acquired for construction of the Zuari Bridge and approach roads. Section 4 notification was issued on 5th March, 1971. Under the said Notification the property belonging to the respondents was identified as being plot no. 30 admeasuring 9412.43 sq. mts,as shown is Exhibit 9. The declaration under Section 6 was thereafter issued which is - also identified as Exh.9 wherein the area declared as needed for public purpose was set out as 5729 sq. mts. No boundaries were earlier shown in the Section 4 notification, but in the declaration under Section 6, the following

boundaries were given:

East - public road

North - Zuari river

West - Zuari river

South - Elisbao Miisio Pereira.

The appellant being aggrieved by the compensation awarded as also measurement, sought a reference under Section 18 of the Land Acquisition Act. It was pointed out that in respect of an area admeasuring 3871 sq. mts., no compensation had been paid. The property was identified as being from survey no.11 and having matriz no.387 and described under no.10314 in the Conservatoria Predial.

. On a reference being made by the Land Acquisition Officer, five issues were framed. Issue no.4 framed reads as under:-

> "Whether the appellants prove that the market rate of the area 3971 from the other plots should be Rs. 50/- per sq. mt."

On behalf of the appellant their power of attorney was examined, who produced various documents which have been duly exhibited. The statement made to the Land Acquisition Officer was also tendered in evidence. Exh. 10 colly. was a Notification issued by the erstwhile Portuguese Government to acquire the said land under the law then in force. Exh.21 is a letter addressed to the President, Municipality of Mormugao dated 6th June, 1968, pointing out that though the land was sought to be expropriated, no steps had been taken

and the land expropriated i.e. an area of 10370 sq. mts. by the erstwhile Portuguese Government should be given up. The land was identified as "Parte do Palmar Novo (4/6)" or "Novellem Bhat", situated at Cortalim. At Exh.23 colly. is the letter dated 11th January, 1971, by the the Superintending Engineer of the Government of Goa addressed to the attorney of the respondents, setting out that the previous Notification is deemed as cancelled, but in the event any land is required for the Zuari Bridge project, the same will be acquired under the Land Acquisition Act and the owners will be notified accordingly. Letter of 13th February, 1971, is in the matter of providing some parking facilities in the same property. Apart from that various witnesses were examined on behalf of the respondents herein. It was the case of the respondents that part of the land admeasuring 3971 sq. mts. was wrongly shown as Government land though it formed part of the land belonging to the appellant. In cross-examination of the power of attorney of the Respondent this was the reply of the witness to the suggestion put to him:

"It is not true to suggest that the northern portion of serial no.11 is the bank of the river Zuari and, therefore, it belongs to the Government."

To another suggestion put ,the reply was:

"It is not true to suggest that 80 mts. from the high tide the property belongs to the Government. It is not true to suggest that on the northern side the portion which not acquired falls within 80 mts. from the high tide."

From the suggestions it is clear that what the

government claimed as their land was because it was 80 meters from the high trade link. Apart from these suggestions the appellants did not produce any document to show their title to the land.

On the evidence before it the Reference Court while answering issue no.4 held that the respondents herein had been unable to prove that the area of 3971 sq. mts. was also acquired beyond the area of 5729 sq. mts. This was held on the basis that the Surveyor was not examined and nor was the plan prepared. It may be mentioned that in the evidence of the Appellant herein, the witness had deposed in the course of cross-examination on behalf of the appellant that the property is surveyed under survey no.11 and has been acquired. This property surveyed under no.11 is admittedly shown in the name of the respondents in the survey records. The Reference Court fixed the market value and accordingly - disposed of the reference.

2. The appellant aggrieved by the said Award of the Reference Court preferred an appeal before this Court being First Appeal No.108 of 1988. Insofar as the market value for the undisputed portion of the land, the matter was referred to the Lok Adalat and settled. The dispute as to the measurement of the land and the market value for the said land was left open for consideration as it was not settled before the Lok Adalat. By the impugned judgment the learned Single Judge held that apart from the area shown in the declaration under Section 6, additional area of 3971 sq. mts. had also been acquired and fixed the market value at the rate of Rs. 12.50 per sq. mt. The learned Judge also held that the appellant would be entitled to 30% solatium on the amount awarded and all other consequential benefits as

per law.

3. The appellant State aggrieved by the said judgment has preferred the present appeal. On behalf of the appellant State it is contended as under:

(a) That the First Appellate Court had no jurisdiction to award compensation in respect of land admeasuring 3971 sq. mts. as, admittedly, the said land was not declared as required for a public purpose in the declaration issued under Section 6. Once that be the case the question of awarding compensation in the reference proceedings would not arise. If it was the case of the respondents that additional land had been taken in possession then it would be open for them to prosecute the matter before a competent Court;

(b) It is pointed out that the area left out from plot no.30 in the declaration under Section 6 was Government land and the respondents had been unable to prove their title to the land and, consequently also, the judgment of the learned Single Judge is liable to be set aside; and

(c) At any rate, considering the documentary evidence on record and the settlement before the Lok Adalat awarding Rs.12.50 per sq. mt., as the market value on the date of Section 4 Notification is much higher and ought to be reduced.

On the other hand, on behalf of the respondents their learned counsel contends that it may be true that the declaration shows the area acquired as only 5729 sq. mts., but what is acquired is not only 5729 sq. mts. but all land

as is described within the boundaries of the said plot belonging to the respondents as set out in the declaration under section 6 Once that be the case, it is pointed out and when the respondents herein disputed the measurement, it was open to the Reference Court and also to the learned Single Judge to have considered the case that additional land had been acquired and the measurement was not proper and accordingly, award compensation for the additional land taken in possession. Insofar as title is concerned, it is pointed out that there is no dispute that the property , plot no.30 falls under survey no.11/1. It is further submitted that the respondents herein have produced their title documents to show that the property belonged to the respondents. The boundaries of the property, even according to the declaration issued under Section 6 no where show any Government land and, on the contrary, on the northern and western sides, are shown as the Zuari river. Insofar as the market value awarded.It is contended that it is based on the evidence on record. There were two sale deeds produced, one of the year 1968 showing the price fixed at Rs.12.50 per sq. mt. and the other of the year 1971 showing the price at Rs.20/- per sq. mt. The land it is pointed out had potential as it was flat land and, consequentially, it cannot be said that what has been awarded is on the higher side.

4. The first question which requires to be determined with by this Court, is the exercise of letters patent jurisdiciton. It may be pointed out that on behalf of the respondents their learned counsel had raised an objection that consequent upon the amendmemt to the Civil Procedure Code and more specifically Section 100 A, no letters patent appeal would be maintainable. A Division Bench of this Court had also so taken the view. However, against one of the

orders a Special Leave Petition has been preferred before the Apex Court which has been admitted and a stay granted. We, therefore, propose to consider the appeal without disposal of the issue raise by the Respondent as if the letters patent appeal is maintainable.

5. In respect of the first issue as to whether it was within the jurisdiction of the learned Single Judge to award compensation for the balance of 3971 sq. mts., the appellant would have been right if in the declaration under Section 6 while setting out the area the boundaries of the land had not been set out. In the instant case, the boundaries of the land have been set out and as pointed out earlier, on the northern and western sides it is bounded by the river Zuari. From the declaration under Section 6, the area is identified as being 5729 sq. mts. The contention of the respondents before the learned Single Judge was that plot no.30 was shown in Section 4 notification as admeasuring 9400 odd sq. mts., whereas the actual area is 9700 sq. mts. That being the case, in our opinion, it was within the jurisdiction of the Reference Court and the learned Single Judge to have considered the issue. It, therefore, cannot be said that it was beyond the competence of the learned Single Judge to have considered awarding compensation for the balance 3971 sq. mts. The contention that the respondents should be directed to file a civil suit will, therefore, have to be rejected. Possession of the entire plot No.30 has been taken over by the Government.

We then come to the actual area concerned. While issuing the declaration under Section 6 the appellant had excluded the area of 3971 sq. mts. This area in the plan prepared for acquisition, though falling under survey no.11,

is shown as Government land. We have earlier adverted to the claim by the Government on this land. The claim is based on a submission that all lands which are 80 mts. from the bank of the river Zuari are the property of the Government. Learned counsel was called upon to point out any law and the provision under which such a contention is possible. It is pointed out that the title vests in the Government under Section 14 of the Land Revenue Code A perusal of Section 14(1) of the Land Revenue Code shows that all lands, public roads, lanes and paths and bridges, ditches, dikes and fences on or beside the same the bed of the sea and of harbours and creeks below the high water mark, and of rivers, streams nullas, lakes and tanks, and all canals and water courses and all standing and flowing water and all rights in or over the same or appertaining thereto, which are not the property of any person are hereby declared to be the property of the Central Government, subject to right of way, and all other rights, public and individual legallly subsisting. Nowhere does Section 14 state that from the bank of the river an area of 80 mts. thereto vests in the State Government.

The argument is therefore, mis-placed. Even if it was contended that the land falls within the high water mark, there is no such material before this Court to arrive at the conclusion that any part of the land falls within the high water mark. In the absence of evidence, it will not be possible for this Court to hold that the land which is surveyed in the name of the respondents in the document prepared by the appellant themselves is the property of the appellant herein. On the other hand, the documentary evidence by way of title,produced by the respondents coupled with the notification earlier by the erstwhile regime for acquiring the very same land, would show that the land

belonged to the respondents herein. The learned Single Judge has in depth considered all these aspects and answered the issue. In fact, the learned Judge has reproduced the same issues which were framed by the learned Reference Court. We find no error in the conclusion arrived at by the learned Single Judge.

The matter pertains to mere appreciation of evidence. We are of the opinion that the view taken by the learned Single Judge is a view based on the material before the learned Single Judge and it is not possible for us to interfere with the said finding recorded insofar as the title and area are concerned.

6. That leaves us with the last contention, namely the market value of the land which was fixed at the rate of Rs.12.50 per sq. mt. The evidence considered by the learned Single Judge were two sale deeds which were relied upon by the appellant and the respondents. Two of the plots were of the same property, one dated 27th November, 1969 at the rate of Rs.12.50 per sq. mt. and the other dated 14th January, 1971, for Rs.20/- per sq. mt., the plots being 400 sq. mts. and 375 sq.mts. respectively. The area acquired and for which compensation was not awarded admeasured 3971 sq. mts. The learned Single Judge has not taken into consideration that if the land was sought to be developed, the usual test would be to exclude 1/3rd of the land, which would be available. No doubt the case is of 3971 sq.mtrs. In our opinion, therefore, if the price of Rs.12.50 per sq.mt. is taken in the year 1969 and capitalizing the said amount and deducting 1/3rd, the market value, as on the date of the Section 4 notification would be Rs.9/- per sq. mt. We, therefore, reduce the amount awarded from Rs.12.50 per sq.

mt. to Rs. 9/- per sq. mt. It may be pointed out that insofar as the plot from the other land acquired it was settled before the Lok Adalat for Rs.4.50 per sq. mt. The nature of that land was hilly, whereas, the nature of the present land is flat.

In the light of that Letters Patent Appeal is partly allowed, inasmuch as the judgment dated 8th/9th November, 2001, is modified to the extent that the market value of the land on the date of Section 4 notification for the balance area of 3971 sq. mts. would be Rs.9/- per sq. mt., instead of Rs.12.50 per sq. mt. Needless to state that the said amount would carry all consquential benefits include solatium and interest therein. The Letters Patent Appeal stands disposed of accordingly. Each party to bear its own costs.

F. I. REBELLO, J.

P. V. HARDAS, J.

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